

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Darren S. Simmons,)	C/A No. 5:13-cv-00644-RMG-KDW
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
William R. Byars, Jr., Agency Director;)	
Thomas E. Bryne, MD; John B. McRee,)	
MD; Doctor Moore, MD; Janine Wresicics,)	
RN; Terry L Andrews, RN; Ms. P. Derrick,)	
RN; Warden John M Pate; A/W Newton,)	
Major Worrick; Ms. Cindy Sanders, Admin)	
Assistance; John H. Carmichael, Jr.;)	
)	
Defendants.)	

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This matter is before the court on Plaintiff's Motion for Entry of Default, ECF No. 47, filed on May 24, 2013, and Motion for Default Judgment, ECF No. 48, filed on May 28, 2013. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Plaintiff's motions ask the court to enter judgment against Defendants contending that Defendants did not timely respond to his Complaint. ECF Nos. 47, 48. Plaintiff argues that Defendants were served on April 30, 2013, and that "more than 20 days have elapsed since the date on which the Defendants herein were served with summons and a copy of Plaintiff's complaint." ECF No. 47.

Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). The undersigned has reviewed the docket and finds that although the court authorized service of process and a summons was issued on April 30, 2013, Defendants have not yet been served with Plaintiff’s Complaint. Therefore Plaintiff’s motion is premature. Accordingly, it is recommended that Plaintiff’s Motion for Entry of Default, ECF No. 47, and Motion for Default Judgment, ECF No. 48, be denied.

IT IS SO RECOMMENDED.

A handwritten signature in black ink, reading "Kaymani D. West". The signature is written in a cursive, flowing style.

May 29, 2013
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge